

BOIES SCHILLER FLEXNER LLP
RICHARD J. POCKER (NV Bar No. 3568)
300 South Fourth Street, Suite 800
Las Vegas, NV 89101
Telephone: 702.382.7300
Facsimile: 702.382.2755
rpocker@bsfllp.com

BOIES SCHILLER FLEXNER LLP
WILLIAM ISAACSON (*pro hac vice*)
KAREN DUNN (*pro hac vice*)
1401 New York Avenue, NW, 11th Floor
Washington, DC 20005
Telephone: (202) 237-2727
Facsimile: (202) 237-6131
wisaacson@bsflp.com
kdunn@bsflp.com

BOIES SCHILLER FLEXNER LLP
STEVEN C. HOLTZMAN (*pro hac vice*)
BEKO O. REBLITZ-RICHARDSON
(pro hac vice)
44 Montgomery Street, 41st Floor
San Francisco, CA 94104
Telephone: 415.293.6800
Facsimile: 415.293.6899
sholtzman@bsflp.com
brichardson@bsflp.com

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC.; a Colorado corporation;
ORACLE AMERICA, INC.; a Delaware
corporation; and ORACLE INTERNATIONAL
CORPORATION, a California corporation.

Plaintiffs,

V.

RIMINI STREET, INC., a Nevada corporation;
and SETH RAVIN, an individual,

Defendants.

MORGAN, LEWIS & BOCKIUS LLP
BENJAMIN P. SMITH (*pro hac vice*)
JOHN A. POLITO (*pro hac vice*)
SHARON R. SMITH (*pro hac vice*)
One Market, Spear Street Tower
San Francisco, CA 94105
Telephone: 415.442.1000
Facsimile: 415.442.1001
benjamin.smith@morganlewis.com
john.polito@morganlewis.com
sharon.smith@morganlewis.com

DORIAN DALEY (*pro hac vice*)
DEBORAH K. MILLER (*pro hac vice*)
JAMES C. MAROULIS (*pro hac vice*)
ORACLE CORPORATION
500 Oracle Parkway, M/S 5op7
Redwood City, CA 94070
Telephone: 650.506.4846
Facsimile: 650.506.7114
dorian.daley@oracle.com
deborah.miller@oracle.com
jim.maroulis@oracle.com

*Attorneys for Plaintiffs Oracle USA, Inc.,
Oracle America, Inc., and Oracle
International Corp.*

Case No. 2:10-cv-0106-LRH-VCF

**DECLARATION OF DAVID R.
KOCAN IN SUPPORT OF
ORACLE'S MOTION TO COMPEL
AND MEMORANDUM OF POINTS
AND AUTHORITIES RE POST-
INJUNCTION REQUESTS FOR
PRODUCTION**

1 I, David R. Kocan, declare as follows:

2 1. I am an associate at Morgan, Lewis & Bockius LLP, counsel of record for
3 Plaintiffs Oracle USA, Inc., Oracle America, Inc. and Oracle International Corporation
4 (collectively “Oracle”) in this action. I have personal knowledge of the facts stated below and
5 could and would testify to them if called upon to do so.

6 2. In response to Oracle’s Supplemental Requests for Production during post-
7 injunction discovery, Rimini has not yet produced any custodial documents. Rimini has produced
8 84,817 documents, none of which are custodial documents, and two technical productions related
9 to Rimini’s Automated Framework software.

10 3. During pre-trial discovery in *Rimini I*, Rimini produced at least 900,000
11 documents in response to Oracle’s requests for production, at least 730,000 of which were
12 custodial documents.

13 4. During pre-trial discovery in *Rimini I*, third parties produced an additional one
14 million documents. Six third parties produced more than 30,000 documents, with three
15 producing over 100,000 documents.

16 5. During pre-trial discovery in *Rimini II*, using a technology-assisted review
17 protocol, Rimini produced over nine million documents in response to Oracle’s requests for
18 production, at least 4.7 million of which were custodial documents.

19 6. During pre-trial discovery in *Rimini II*, third parties produced over 3.5 million
20 documents. Eighteen third parties produced more than 30,000 documents, with five producing
21 over 100,000 documents.

22 7. In support of its motions for partial summary judgment to establish liability based
23 in part on Rimini’s ongoing cloud hosting and cross-use in *Rimini II*, Oracle relied on a
24 significant number of custodial documents, including from custodians who Oracle is currently
25 requesting for Injunction compliance.

26 8. Attached to this Declaration as Exhibit 1 is a list of Oracle’s proposed search
27 terms.

1 9. Attached to this Declaration as Exhibit 2 is a true and correct excerpted copy of
2 Rimini's purported Rule 28(j) notice of supplemental authority filed in the Ninth Circuit in
3 connection with Rimini's pending appeal of the Injunction, stating that "the parties and the
4 district court would greatly benefit from the issuance of the Court's decision, at least as to the
5 validity and scope of the permanent injunction, by October 20, 2019—the deadline for Oracle to
6 file any application in the district court regarding Rimini's compliance with the extant injunction
7 (which has not been stayed pending appeal)."

8 10. Attached to this Declaration as Exhibit 3 is a true and correct copy of a letter from
9 John Polito to Mark Perry dated June 28, 2019, which provided a list of five potential Injunction
10 violations pursuant to the Court's June 21, 2019 scheduling order. The potential violations listed
11 were: (1) cloud-hosting of PeopleSoft software and support materials; (2) cross-use of PeopleSoft
12 software and support materials; (3) cross-use of JD Edwards software and support materials; (4)
13 access to JD Edwards source code; and (5) distribution of PeopleSoft and JD Edwards software
14 and support materials.

15 11. Oracle has served thirteen Supplemental Requests for Production: Oracle's
16 Supplemental Requests for Production of Documents (RFPs 1–5), served May 1, 2019, Oracle's
17 Second Supplemental Requests for Production of Documents (RFPs 6–7), served June 28, 2019,
18 Oracle's Third Supplemental Requests for Production (RFPs 8–11), served July 23, 2019, and
19 Oracle's Fourth Supplemental Requests for Production (RFP No. 12), served August 8, 2019, and
20 Oracle's Fifth Supplemental Requests for Production (RFP No. 13), served August 15, 2019.

21 12. Attached to this Declaration as Exhibit 4 is a true and correct copy of Rimini
22 Street, Inc.'s Corrected First Supplemental Responses to Oracle's Supplemental Requests for
23 Production of Documents, dated July 18, 2019.

24 13. Attached to this Declaration as Exhibit 5 is a true and correct copy of Oracle's
25 Third Supplemental Requests for Production to Defendant Rimini Street, Inc., dated July 23,
26 2019.

1 14. Attached to this Declaration as Exhibit 6 is a true and correct copy of Oracle's
2 Fifth Supplemental Requests for Production to Defendant Rimini Street, Inc., dated August 15,
3 2019.

4 15. Attached to this Declaration as Exhibit 7 is a true and correct copy of a letter from
5 Kathleen Hartnett to Eric Vandevelde dated June 28, 2019, in which Oracle reminded Rimini that
6 "Rimini's production should include responsive custodial documents, including emails, texts, and
7 IMs."

8 16. Attached to this Declaration as Exhibit 8 is a true and correct copy of a letter from
9 Casey McCracken to Jacob Minne dated July 9, 2019, in which Rimini proposed an extremely
10 limited custodial search and production from four custodians, none of which were executive
11 custodians.

12 17. Attached to this Declaration as Exhibit 9 is a true and correct copy of a letter from
13 Jacob Minne to Casey McCracken dated July 12, 2019 in which Oracle proposed twenty
14 custodians grouped into five categories—executives and policymakers, in-house tool developers,
15 IT and environment support personnel, PeopleSoft developers, and JD Edwards developers—and
16 270 search terms grouped into sixteen categories. Oracle asked that Rimini collect documents for
17 each proposed custodian and provide information about the number of documents hit by each
18 search term for each proposed custodian, to assist the parties in negotiation and any refinement of
19 Oracle's proposed search terms.

20 18. Attached to this Declaration as Exhibit 10 is a true and correct excerpted copy of a
21 letter from Casey McCracken to Jacob Minne dated July 17, 2019 in which Rimini rejected
22 Oracle's list of custodians and search terms, describing email and instant message discovery for
23 20 custodians as "massively burdensome," and Oracle's proposed 20 custodians "excessive and
24 wholly disproportionate to the process changes at issue. Rimini refused to provide search-term-
25 hit information for the majority of Oracle's proposed custodians, agreeing only to provide search
26 term hit counts for the two custodians it had proposed and four more non-executive custodians
27 from Oracle's list. Rimini asserted that the three executive level employees that Oracle
28

1 proposed (Mr. Ravin, Ms. Lyskawa, and Mr. Grady) “are substantially less likely to have
2 information relevant to the process changes Rimini implemented.”
3

4 19. Attached to this Declaration as Exhibit 11 is a true and correct copy of a letter
5 from Jacob Minne to Casey McCracken dated July 18, 2019 in which Oracle explained the basis
6 for its request for “executive personnel” custodians, as well as its careful selection of a narrow
7 cross-section sample of other relevant Rimini employees. Oracle also identified six custodians
8 for which it sought immediate search term hit counts and requested immediate hit counts for the
9 two custodians that Rimini had proposed.

10 20. Attached to this Declaration as Exhibit 12 is a true and correct copy of a letter
11 from Casey McCracken to Jacob Minne dated July 23, 2019, in which Rimini asserted that
12 Oracle’s request for 20 custodians and to include executives is unduly burdensome and
13 disproportionate.

14 21. Attached to this Declaration as Exhibit 13 is a true and correct excerpted copy of a
15 July 26, 2019 email from Jennafer Tryck to Oracle’s counsel in which Rimini provided search
16 term hit counts for the six requested custodians and two Rimini-identified custodians, stated it
17 was only willing to produce documents if Oracle agreed to withdraw its other custodian requests
18 entirely, and indicated that it would refuse to agree to any further custodians or search terms once
19 a custodian set was finalized. This hit count data consists of a spreadsheet with raw numbers of
20 documents returned by Oracle’s proposed search terms for each of the initial eight custodians.
21 While each search term has a “unique total” number of documents indicating the total number of
22 unique documents returned by that search term across all of the initial eight custodians combined,
23 it is impossible to determine where any duplication between custodians might occur. For
24 example, the term “injun*” returns a “unique total” of 2,776 documents. However, the provided
25 totals for each custodian result in a sum of 3,004 documents. There is no way for Oracle to
26 determine based on this data that, for example, two custodians generally have overlapping
27 documents such that elimination of one custodian would have minimal impact on the substance of
28 the documents reviewed for responsiveness.

22. Attached to this Declaration as Exhibit 14 is a true and correct excerpted copy of a July 30, 2019 email from Jennafer Tryck to Oracle's counsel in which Rimini rejected Oracle'[s proposed custodians and provided hit counts for each of Oracle's proposed search terms on a per-custodian basis limited to eight custodians.

23. Attached to this Declaration as Exhibit 15 is a true and correct excerpted copy of a July 30, 2019 email from Casey McCracken to Oracle’s counsel explaining Rimini’s position that it has no obligation to produce anything before the close of discovery.

24. Attached to this Declaration as Exhibit 16 is a true and correct copy of a letter from Jacob Minne to Jennafer Tryck, dated August 2, 2019, in which Oracle proposed potential compromises with Rimini, including narrowing certain search terms that Rimini had identified as the most burdensome and reducing the number of custodians to twelve, subject to Oracle's ability to add back custodians if later case developments warranted.

25. Attached to this Declaration as Exhibit 17 is a true and correct excerpted copy of a letter from Jennafer Tryck to Jacob Minne dated August 5, 2019, in which Rimini further narrowed its offer of custodial discovery to a review of only 30,000 custodial documents across six custodians. Rimini provided no meaningful information concerning how the removal of particular custodians or terms would impact the production of relevant documents. Rimini disclosed that one of Oracle’s requested topical custodians, the to-be-identified lead developer for certain post-Injunction JD Edwards updates, was the same as a named custodian, such that Oracle’s request for 20 custodians was actually for nineteen. Rimini also rejected Oracle’s proposed schedule as “absurd,” but failed to propose an alternative timeline.

26. Attached to this Declaration as Exhibit 18 is a true and correct copy of an August 11, 2019 email from me to Rimini's counsel dropping search terms for Database and Siebel and narrowing several other search terms as to all custodians, and dropping additional search terms as to Mr. Ravin, Ms. Lyskawa, and Mr. Grady only.

27. Attached to this Declaration as Exhibit 19 is a true and correct excerpted copy of an August 13, 2019 email from Jennafer Tryck to Oracle's counsel in which Rimini unilaterally

1 chose 33 of Oracle's proposed search terms resulting in fewer than 30,000 document hits. Rimini
2 stated that beginning August 15, 2019 at 5 p.m. Pacific, Rimini would use those 33 search terms
3 and six custodians as the set of documents that it would review and from which it would make
4 rolling custodial productions unless Oracle responded to provide an equally limited set of search
5 terms.

6 28. Attached to this Declaration as Exhibit 20 is a true and correct excerpted copy of
7 an August 16, 2019 letter from John Polito to Mark Perry amending Oracle's June 28, 2019 "list
8 describing conduct disclosed in Rimini II (including cross-use and cloud hosting) which Oracle
9 contends would violate Judge Hicks' injunction if it continued after the injunction was effective,"
10 ECF No. 1232, to withdraw claims that access to JD Edwards source code that does not also
11 entail copying of JD Edwards source code would violate the Injunction in light of the Ninth
12 Circuit's opinion. The letter also withdrew five search terms in light of the opinion.

13 29. Attached to this Declaration as Exhibit 21 is a true and correct copy of a document
14 produced by Rimini in *Rimini II*, endorsed with Bates number RSI006850037.

15 30. Attached to this Declaration as Exhibit 22 is a true and correct excerpted copy of a
16 Rimini press release, "Rimini Street Statement on U.S. Appeals Court Ruling," dated August 19,
17 2019.

18 I declare under penalty of perjury under the laws of the United States that the foregoing is
19 true and correct and that this declaration is executed at San Francisco, California, on August 19,
20 2019.

21 Dated: August 19, 2019

/s/ David R. Kocan

22 David R. Kocan

24 Attorneys for Plaintiffs Oracle USA, Inc., Oracle
25 America, Inc. and Oracle International
26 Corporation